UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

August 25, 2016

Ms. Melissa Hatcher
US Department of Transportation
Federal Railroad Administration
1200 New Jersey Ave SE, RPD-13, MS-20
Washington, DC 20590

Dear Ms. Hatcher:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas has completed its review of the above Draft Environmental Impact Statement (DEIS) prepared by Federal Railroad Administration (FRA). The Federal Railroad Administration (FRA), in cooperation with Texas Department of Transportation (TXDOT) released the level (Tier 1) DEIS for the Texas-Oklahoma Passenger Rail study, encompassing route and service alternatives for passenger rail between Oklahoma City to Fort Worth and Dallas (northern section), and south to San Antonio via Austin (central section), and south to Laredo, Corpus Christi and Brownsville (southern section).

EPA rates the DEIS as "**EC-2",** i.e., EPA has "environmental concerns and requests additional information" in the Final Environmental Impact Statement (FEIS). EPA's Rating System Criteria can be found here: http://www.epa.gov/oecaerth/nepa/comments/ratings.html. Detailed comments are enclosed with this letter which clearly identifies our concerns and the informational needs requested for incorporation in to the FEIS. Responses to comments should be placed in a dedicated section of the FEIS and should include the specific location where the revision, if any, was made. If no revision was made, a clear explanation should be included.

EPA appreciates the opportunity to review the DEIS. Please send our office two copies of the FEIS, and an internet link, when it is sent to the Office of Federal Activities, EPA (Mail Code 22252A), William Jefferson Clinton Federal Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. If you have any questions or concerns, please contact me at (214) 665-8565 or via email at houston.robert@epa.gov or Michael Jansky of my staff at (214) 665-7451 or via email at jansky.michael@epa.gov for assistance.

Sincerely,

Robert Houston, Chief
Special Projects Section (6EN-WS)
Compliance Assurance and
Enforcement Division

Enclosure

DETAILED COMMENTS
ON THE
FEDERAL RAILROAD ADMINISTRATION
SERVICE LEVEL TIER ONE
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
TEXAS-OKLAHOMA PASSENGER RAIL STUDY CORRIDOR
SOUTH TEXAS TO OKLAHOMA CITY

BACKGROUND

The Federal Railroad Administration (FRA), in cooperation with Texas Department of Transportation (TXDOT) released a service level (Tier 1) Draft Environmental Impact Statement (DEIS) for the Texas-Oklahoma Passenger Rail study, encompassing route and service alternatives for passenger rail between Oklahoma City to Fort Worth and Dallas (northern section), and south to San Antonio via Austin (central section), and south to Laredo, Corpus Christi and Brownsville (southern section). The Tier 1 DEIS addresses the first tier of broad corridor issues and alternatives. Subsequent project level second tier (Tier 2) NEPA evaluations will analyze site-specific projects based on the decisions made at the service level.

COMMENTS

The following comments are offered for FRA's consideration in preparation of the Tier 1 FEIS:

Dredge and Fill Impacts to Waters of the United States

The Clean Water Act (CWA) Section 404 regulates the discharge of dredged or fill material into waters of the United States (WOUS), including wetlands and other special aquatic sites. Due to the nature of the proposed Passenger Rail Program project, which will require dredging and placement of fill required for construction of aboveground facilities, including potential placement in WOUS, it will require a Section 404 permit under the CWA. As such, the applicant should coordinate with the U.S. Army Corps of Engineers (Corps).

EPA recommends that the Federal Railroad Administration (FRA) include a wetland delineation for the project area in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the December 2006 Atlantic and Gulf Coast Region Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual. A Corps approved jurisdictional determination (JD) will also be required to confirm the extent of the jurisdictional WOUS in the project area that may be directly or indirectly impacted by the project.

When the Corps issues a public notice for the CWA Section 404 permit application, the EPA will review the project for compliance with Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA. Pursuant to 40 CFR 230, any permitted discharge into WOUS must be the least environmentally damaging practicable alternative available to achieve the project

purpose. We recommend the FEIS include an evaluation of the project alternatives in this context in order to demonstrate the project's compliance with the 404 (b) (1) Guidelines. If, under the proposed project, dredged or fill material would be discharged into WOUS, we recommend that the FEIS discuss alternatives to avoid and minimize those discharges.

If the project proposed in the Service Level DEIS would require dredging or disposal of fill material in WOUS, the applicant should be aware that, depending on the method of disposal proposed, it may be necessary to test the dredged material for contaminants prior to placement. If the material would be placed in an upland confined disposal facility, but would result in a discharge of effluent to WOUS, this discharge would require water quality certification under CWA Section 401. Section 230.10(b) (1) prohibits the disposal of dredged material that might violate applicable water quality standards, after consideration of disposal site dilution and dispersion. Therefore, sediment contaminant testing should be performed using the Corps Upland Testing Manual in cases where potentially contaminated dredged material is proposed for disposal in a Confined Disposal Facility, and there is the potential for release of contamination into WOUS through effluent. If the material would be placed into WOUS for beneficial use, such as creation of wetlands, then sediments should be tested for contamination according to the Corps/EPA Inland Testing Manual to determine their suitability for open water disposal.

In addition, EPA recommends that FRA prepare a draft wetland mitigation plan for review and comment by EPA, the Corps, and other interested stakeholders. The mitigation plan should compensate for unavoidable impacts to aquatic resources, and be included in the DEIS along with the applicant's analysis and any additional information relevant to potential impacts to wetlands and other aquatic resources.

Storm Water Considerations

EPA recommends the FEIS describe the original (natural) drainage patterns in the project locale, as well as the drainage patterns of the area during project operations. Also, we recommend the EIS identify whether any components of the proposed project are within a 50 or 100-year floodplain. We also recommend noting that, under the Federal Clean Water Act, any construction project disturbing a land area of one or more acres requires a construction storm water discharge permit.

Recommendations:

EPA recommends the FEIS document the project's consistency with applicable storm water permitting requirements. Requirements of a storm water pollution prevention plan would be reflected as appropriate in the FEIS.

We also recommend the FEIS discuss specific mitigation measures that may be necessary or beneficial in reducing adverse impacts to water quality and aquatic resources.

Air Quality: PM_{10} Emissions and Fugitive Dust Control

The DEIS states that this service-level DEIS analyzes the environmental effects of route and service type options at the conceptual planning stage only. However, potentially unavoidable adverse effects are identified, as described in Section 5.0 Unavoidable Adverse Effects. The DEIS also states that potential adverse effects can only be generalized at this service level of review, because field studies were not conducted. However, the responsible parties should develop a detailed Construction Emissions Mitigation Plan (Plan) to further enhance the proposed mitigation measures, even at the conceptual stage.

EPA recommends that, in addition to all applicable local, state, or federal requirements, the following mitigation measures be considered (**as applicable and practicable**) in the development of the plan order to reduce air quality impacts associated with emissions of NOx, CO, CO_2, PM, SO_2, and other pollutants from construction-related activities, any planned structural and non-structural activities, and any possible future modifications to the railway/roadway system in the specific project areas:

Recommendations:

- *Construction Emissions Mitigation Plan* – we recommend the following control measures be considered (**as applicable and practicable**) in the Construction Emissions Mitigation Plan in order to reduce impacts associated with emissions of particulate matter and other pollutants from construction-related activities:
    - Fugitive Dust Source Controls: We recommend that the plan include these general commitments:
        - Stabilize heavily used unpaved construction roads with a non-toxic soil stabilizer or soil weighting agent that will not result in loss of vegetation, or increase other environmental impacts.
        - During grading, use water, as necessary, on disturbed areas in construction sites to control visible plumes.
        - Vehicle Speed
            - Limit speeds to 25 miles per hour on stabilized unpaved roads as long as such speeds do not create visible dust emissions.
            - Limit speeds to 10 miles per hour or less on unpaved areas within construction sites on un-stabilized (and unpaved) roads.
            - Post visible speed limit signs at construction site entrances.
        - Inspect and wash construction equipment vehicle tires, as necessary, so they are free of dirt before entering paved roadways, if applicable.
        - Provide gravel ramps of at least 20 feet in length at tire washing/cleaning stations, and ensure construction vehicles exit construction sites through treated entrance roadways, unless an

alternative route has been approved by appropriate lead agencies, if applicable.

- Use sandbags or equivalent effective measures to prevent run-off to roadways in construction areas adjacent to paved roadways. Ensure consistency with the project's Storm Water Pollution Prevention Plan, if such a plan is required for the project.
- Sweep the first 500 feet of paved roads exiting construction sites, other unpaved roads en route from the construction site, or construction staging areas whenever dirt or runoff from construction activity is visible on paved roads, or at least twice daily (less during periods of precipitation).
- Stabilize disturbed soils (after active construction activities are completed) with a non-toxic soil stabilizer, soil weighting agent, or other approved soil stabilizing method.
- Cover or treat soil storage piles with appropriate dust suppressant compounds and disturbed areas that remain inactive for longer than 10 days. Provide vehicles (used to transport solid bulk material on public roadways and that have potential to cause visible emissions) with covers. Alternatively, sufficiently wet and load materials onto the trucks in a manner to provide at least one foot of freeboard.
- Use wind erosion control techniques (such as windbreaks, water, chemical dust suppressants, and/or vegetation) where soils are disturbed in construction, access and maintenance routes, and materials stock pile areas. Keep related windbreaks in place until the soil is stabilized or permanently covered with vegetation.

o Mobile and Stationary Source Controls:

- Plan construction scheduling to minimize vehicle trips.
- Limit idling of heavy equipment to less than 5 minutes and verify through unscheduled inspections.

o Administrative controls:

- Develop a construction traffic and parking management plan that maintains traffic flow and plan construction to minimize vehicle trips.
- Identify any sensitive receptors in the project area, such as children, elderly, and the infirm, and specify the means by which impacts to these populations will be minimized (e.g. locate construction equipment and staging zones away from sensitive receptors and building air intakes).

- Include provisions for monitoring fugitive dust in the fugitive dust control plan and initiate increased mitigation measures to abate any visible dust plumes.

Permits and General Planning

Section 7.0 - Permits of the DEIS identifies the permits potentially required for the construction of the Passenger Rail System (Table 7-1 on page 7-1). Please identify whether or not there are any other anticipated permits for smaller scale stationary sources, such as compressors, portable and/or auxiliary units, that may be needed during the construction and operation of the rail system.

Also, even though the DEIS discusses the cities with potential rail stations (in both Oklahoma and Texas), nonattainment and ozone advance areas, and transportation conformity in several sections, it does not appear that the DEIS fully discusses transportation planning issues. For example, the DEIS does not discuss how the Passenger Rail System would be integrated into the Transportation Plan for the DFW area and other applicable areas (e.g., Austin-Round-Rock San Marcos Ozone Advance Area). Given the importance and scale of this proposed 850 mile railway system, we recommend that future environmental documentation more fully discuss and clarify the planning aspects of the project for each section of railway (i.e., Northern Section, Central Section and Southern Section).

Climate Change

The Tier 1 DEIS does not include a reasonable consideration of greenhouse gas (GHG) emissions and climate change impacts. EPA recommends that NEPA analyses include an estimate of the direct and indirect GHG emissions caused by the proposal, a discussion of the incremental impacts of the estimated GHGs, and an analysis of reasonable alternatives and/or practicable mitigation measures to avoid, reduce, or compensate for GHG emissions caused by the proposal. In addition, CO_2 emissions have centuries-long impacts, including global scale changes in ocean acidity, sea level, and mean temperature, as well as changes to local drought and precipitation levels. For purposes of informing decision-makers and the public, EPA recommends this context be provided, and that estimated GHG emissions levels should be used as a general proxy to compare emissions levels from the proposal, alternatives, and potential mitigation. In other words, higher levels of incremental emissions cause higher levels of incremental impacts and risks.

EPA recommends that FRA provide a similar analysis for the Texas-Oklahoma Passenger Rail Study that was afforded to the FRA North East Corridor (NEC) Rail Study EIS. This approach would afford consistency among FRA projects. EPA offers for your consideration the following excerpts from the NEC DEIS that discuss GHG and Climate Change. This is an example of the level of analysis we believe should be provided in the Texas-Oklahoma Tier 1 EIS and should be considered to guide you in the analysis process.

The following is offer for consideration:

GHG

On page 7.13-17 of the Tier Draft EIS for the NEC Future the following charts provide the type of information on GHG emissions that seem to be achievable and should have been included in the DEIS. The GHG section is 7.13.5 and goes from 7.13.5.1 through 7.13.21 http://www.necfuture.com/pdfs/tier1_deis/c07_13.pdf

Table 7.13-8: Greenhouse Gas Emissions by Geography (2012)

Geography	Greenhouse Gas Emissions (million
D.C.	3
MD	59
DE	13
PA	233
NJ	99
NY	154
CT	32
RI	10
MA	59

Source: U.S. Energy Information Administration, August 2015.

7.13.5.2 Environmental Consequences

Table 7.13-9 presents the changes in GHGs in the Study Area, in terms of CO_2e, in the year 2040. The changes in CO_2e are presented for roadways, diesel trains, and electric trains.

Table 7.13-9: 2040 Changes in CO_2e (tons/year) – Existing Energy Profile

Project Element	Alt. 1	Alt. 2	Alternative 3			
			via Central CT/Providence	via Long Island/	via Long Island/	via Central CT/Worcester
Roadways	-403,330	-545,875	-602,530	-568,705	-622,645	-587,905
Diesel Trains	0	-10,540	0	1	1	1
Electric Trains	128,685	229,235	367,365	378,115	384,920	241,545
TOTAL	**-274,650**	**-327,180**	**-235,165**	**-190,590**	**-237,730**	**-346,360**

Source: NEC FUTURE team, 2015

As shown in Table 7.13-9, CO_2e from roadways would decrease with all Action Alternatives, whereas the CO_2e from electric trains would increase with all Action Alternatives. Overall, the net total GHGs

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Climate Change

There is also a discussion of Climate Change and Adaptation, more focused on coastal concerns of inundation. I don't believe that needs to be discussed. But, the language on extreme heat and cold on pages 7.15-34 through 7.15-40 contain pretty good language that FRA should read and consider for inclusion. http://www.necfuture.com/pdfs/tier1_deis/c07_15.pdf. The website for the whole DEIS is: http://www.necfuture.com/tier1_eis/deis/

Emissions

EPA recommends that the FEIS estimate the direct and indirect GHG emissions caused by a proposal and its alternatives. Examples of tools for estimating and quantifying GHG emissions can be found on CEQ's website. These emissions levels can serve as a reasonable proxy for climate change impacts when comparing the alternatives and considering appropriate mitigation measures.

EPA recommends that EISs describe measures to reduce GHG emissions associated with the project, including reasonable alternatives and appropriate mitigation, and disclose the estimated GHG reductions. The EPA further recommends that the Record of Decision commit to implementation of reasonable mitigation measures that would reduce project-related GHG emissions.

Climate Change Adaptation

We recommend including a summary discussion of climate change and ongoing and reasonably foreseeable effects of climate change relevant to the project and the project study area relevant to the proposal, based on U.S. Global Change Research Program assessments in the EIS's "Affected Environment" section. Future climate scenarios included in the assessments can be useful when considering measures to improve the resiliency of the proposal to the impacts of climate change as well as mitigation for potential impacts of the proposal that will be exacerbated by climate change.

EPA recommends that consistent with federal policy, the proposal's design incorporate measures to improve resiliency to climate change where appropriate. These changes could be informed by the future climate scenarios addressed in the "Affected Environment" section. The EIS's alternatives analysis should, as appropriate, consider practicable changes to the proposal to make it more resilient to anticipated climate change. Changing climate conditions can affect a proposed project, as well as the project's ability to meet the purpose and need presented in the EIS. One such example would be infrastructure located in coastal regions that may be affected by sea level rise.

Effects of Climate Change on Project Impacts

When considering the potential impacts of the proposal, we recommend Federal agencies consider the future climate scenarios in the "Affected Environment" section to determine whether the environmental impacts of the alternatives would be exacerbated by climate change. If impacts may be exacerbated by climate change, additional mitigation measures may be warranted. EPA recommends FRA refer to the August 1, 2016, CEQ Final Guidance For Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in the NEPA Reviews for evaluating these effects on the environment.

Tribal Analysis:

FRA is in the process of conducting studies and evaluating the total and actual impacts of the project on Tribal. It appears that FRA is implementing its Tribal Analysis in accordance with Executive Order 13175.

Three recognized Tribe expressed interest in government-to-government consultation. These Tribes are Delaware Nation, Chickasaw Nation and Chickasaw Nation. The Choctaw Nation of Oklahoma requested additional information to thoroughly evaluate their interest per NHPA Section 106 review.

Environmental Justice Analysis:

It appears that FRA is attempting to implement its Environmental Justice Analysis in accordance with Executive Order (EO) 12898. Since this is a service-level analysis, FRA did not present specific analysis on the potential for adverse effects and/or determine whether the Program would result in disproportionately high and adverse effects on minority and/or low-income populations.

The FRA's service level analysis reveals that there is potential for adverse effects on environmental justice populations. The potential adverse effects on environmental justice populations ranged from moderate to significant, based on the Alternative rail route.

The Office of Environmental Justice and Tribal International Activities (OEJTIA):

In the essence of EJ2020, on August 05, 2016, the OEJTIA EJ Liaison was notified and encouraged to notify it stakeholders of the Public Hearings and the comment period for the DEIS for TOPRP, which ends August 29, 2016. EPA Region 6 has the following recommendations:

Recommendations:

OEJTIA recommends that FRA utilized the Promising Practice Report (16-2016.pdf) to supplement the applicable requirements for considering and analyzing Environmental Justice population for each tier of the project.

OEJITIA recommends that DEIS for appropriate phase/tier of the project incorporates any information and/or comments received from the tribal government-to-government consultations.

OEJTIA recommends that discussions be provided on Tribal (Executive Order 13175) impacts and an in-depth explanation for a no impact determination be included in the DEIS.

In this DEIS FRA has not identified the Environmental Populations and the actual impacts have not adequately been assessed and OEJTA recommends it be adequately defined and discussed in accordance with Executive Order 12898 and EPA guidance.

OEJTIA recommends that all the necessary tools and methods (i.e. EJ Screen, U.S. Census Bureau and area knowledge) be used in identifying the low income and minority population within or near the parameter of the project.

OEJTA recommends the actual direct, indirect and cumulative impact in its totality to the minority or low-income population be identified and explain concise, but briefly.

OEJTA recommends that FRA takes into consideration all the public's comments and selects the alternative that has minimum disproportionately high, adverse human health or environmental effects on minority and low-income populations or individuals and implements adequate mitigation measures.

OEJTIA recommends that in the appropriate phase/tier of the project that an in-depth, but brief explanation for a no impact determination be included for the identified Environmental communities along the parameter of the project.

Coordination with Land Use Planning Activities

We recommend the FEIS discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the project areas. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed if they have been formally proposed by the appropriate government body in a written form (CEQ's Forty Questions, #23b).